

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 02-0396**  
**Gross Retail Tax**  
**For Years 1994—1999**

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Gross Retail Tax—Personal Computers**

**Authority:** IC § 6-8.1-5-1(b); IC § 6-2.5-2-1; IC § 6-2.5-3-1; IC § 6-2.5-3-7; 45 IAC 15-5-3(8); 45 IAC 2.2-2-1; 45 IAC 2.2-3-4

Taxpayer protests the assessment of gross retail tax on sales of personal computers.

**STATEMENT OF FACTS**

Taxpayer markets personal computers, selling them to many resellers for ultimate sales to consumers and selling to corporations and other entities that use personal computers for internal purposes. According to the auditor, multiple sales and large dollar amounts to any one particular customer did not necessarily indicate a resale situation. The auditor's examination of the taxpayer's listing of sales by customer resulted in the assessment of gross retail tax on sales for which no evidence of exemption was provided. Taxpayer timely protested, supplying the Department with additional documentation, some of which the auditor accepted to reduce taxpayer's liability.

The current posture of the protest is as follows. Taxpayer is presently in bankruptcy and has an appointed bankruptcy trustee. The trustee has the authority to pursue the adjudication/settlement of this gross retail tax liability and has requested that the Department issue a Letter of Findings based on the best information available in the file to ascertain taxpayer's gross retail tax liability in the State of Indiana. Additional facts will be supplied as required.

**I. Gross Retail Tax—Personal Computers**

**DISCUSSION**

Pursuant to IC § 6-8.1-5-1(b) and 45 IAC 15-5-3(8), a "notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that

the proposed assessment is wrong rests with the person against whom the assessment is made.” Pursuant to IC § 6-2.5-2-1, a “person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.” *See also*, 45 IAC 2.2-2-1. Pursuant to IC §§ 6-2.5-3-1 through 6-2.5-3-7, an “excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana is the property was acquired in a retail transaction.” IC § 6-2.5-3-7 provides that a “person who acquires tangible personal property from a retail merchant for delivery in Indiana is presumed to have acquired the property for storage, use, or consumption in Indiana;” therefore, the presumption of taxability exists until rebutted. *See also*, 45 IAC 2.2-3-4.

According to the original audit’s projection agreement for the tax years at issue, taxpayer’s original liability, based on records tendered to the auditor, was ascertained according to the best information available to the auditor. Taxpayer then filed a protest, submitting additional documentation, mainly exemption certificates. The auditor reviewed the supplemental documentation and arrived at a current gross retail tax liability. Pursuant to an agreement between the Indiana Department of Revenue and taxpayer’s bankruptcy trustee, the taxpayer’s gross retail tax liability is based upon the figure the auditor arrived at after reviewing the supplemental documentation. A penalty assessment of 10%, plus statutorily imposed interest, will be added to the bill sent to taxpayer.

### **FINDING**

Taxpayer’s protest concerning the assessment of gross retail tax on the sale of personal computers to consumers is sustained to the extent that correct documentation has been provided.